

Defendant Tone N. Grant, by and through undersigned counsel, respectfully submits this memorandum of law in opposition to the motion for summary judgment of Arch Insurance Company (“Arch”), pursuant to Rule 56 of the Federal Rules of Civil Procedure, in *Arch Insurance Co. v. Agoglia, et al.*, No. 08-CV-5252 (S.D.N.Y.).

Mr. Grant hereby adopts and incorporates by reference the arguments set forth in the opposition briefs submitted today by John D. Agoglia, Peter McCarthy, Dennis A. Klejna, William M. Sexton, Gerald Sherer, Josephy Murphy, Richard N. Outridge, Philip Silverman, Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott L. Jaeckel, Thomas H. Lee, Ronald L.O’Kelley and Scott A. Schoen (the “Joint Brief Insureds”).

As demonstrated in the Joint Brief Insureds’ opposition memorandum, Arch is not entitled to summary judgment, for at least three reasons. First, material questions of fact exist as to whether over the “full severability” endorsement in the primary policy precludes Arch from invoking the knowledge of one insured to deny coverage for all insureds. Second, even if the full severability endorsement did not apply, Arch has not met its burden to prove that all of the claims asserted in the underlying actions for which it denies coverage arise out of Phillip Bennett’s knowledge. Finally, Arch may not rely on the stipulation it executed with Bennett to “prove” that no coverage exists as to other insureds.

Accordingly, and as set forth in greater detail in the Joint Brief Insureds’ memorandum, Arch’s motion for summary judgment should be denied.

Dated: August 8, 2008
New York, New York

Respectfully submitted,

s/ Norman L. Eisen

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